

Statement of
Edward R. Osann
President, Potomac Resources, Inc.

on behalf of the
Natural Resources Defense Council

regarding

Operations of the CVP Water Delivery System
and the CALFED Record of Decision

before the

Subcommittee on Water and Power
Committee on Resources
U. S. House of Representatives

February 14, 2002

Chairman Calvert and members of the Subcommittee. Thank you for the opportunity to speak with you today. My name is Edward R. Osann. I am here today on behalf of the Natural Resources Defense Council (NRDC), an organization with over 500,000 members, 100,000 of them in California, to testify regarding Sacramento-San Joaquin Delta operations and related water supply issues.

By way of background, I have appeared before this subcommittee on many occasions in the past. From 1993 to 1995, I served as Director of Policy and External Affairs for the Bureau of Reclamation. Prior to joining the federal government, I served as Director of the Water Resources Program of the National Wildlife Federation from 1980 to 1993. I currently maintain a consulting practice specializing in energy and natural resources policy.

CALFED: Key to the Future. For the past 10 years, stakeholders and agencies have been working in California to develop a comprehensive plan to address a broad range of complex ecosystem restoration, water quality and water supply issues related to the Bay-Delta system. This extraordinarily challenging effort resulted in a final plan, adopted through the CALFED Bay-Delta Program in August of 2000. This ambitious plan enjoys support from the Bush and Davis administrations, as well as from agricultural, urban, environmental, and other stakeholder groups. If implemented in a balanced fashion, NRDC believes that this plan will result in significant water supply, water quality, and ecosystem benefits. West side CVP water supply is one of many issues addressed in this plan. In short, the CALFED plan is currently the only map available to help decision-makers navigate complex water problems in California.

Westlands: Reckless Attacks on CALFED. One of the issues you are considering today is the delivery of highly subsidized water from the Central Valley Project (CVP) to the Westlands Water District and other growers on the west side of the San Joaquin Valley. We acknowledge that growers in this area face significant challenges, but it is important to recognize that they knew of these challenges when they made business decisions to purchase land and sign water contracts in this area. Westlands growers paid lower prices for their land because of the selenium and other drainage problems in this region. These west side

interests have always known that their CVP water supplies are junior to other water users and that their CVP contract provides a supplemental supply, to be delivered when available and well short of what they claim to be their full need. Because of these lower land prices, Westlands growers have been able to invest in water transfers, higher value crops and drainage and irrigation systems. They have also been aided by massive water, crop, and other subsidies.

The Central Valley Project, like many water projects, is overcommitted. Water users have succeeded in persuading project operators to write contracts for far more water than they are capable of delivering. In California, the Friant unit of the CVP regularly cannot deliver full Level 2 supplies. The State Water Project has never delivered all of the water for which it has written contracts. In fact, it regularly delivers 60 percent or less of contract entitlements. The West side of the San Joaquin Valley also exhibits this trend, although no more than other water projects. Other water users -- in the Friant Unit and the State Project -- have recognized this uncertainty and have planned appropriately to meet their needs. Westlands, however, has adopted a different strategy. Its approach has been to attempt to litigate and legislate its way to a more reliable subsidized water supply, at the expense of the ecosystem and other water users. We urge you not to encourage this destructive and destabilizing approach to resolving water issues.

The remainder of my testimony will focus on a number of recommendations which we believe would keep the CALFED program moving forward in a balanced fashion and would result in West side water supply benefits, together with additional benefits throughout the state.

We urge Congress and the Department of the Interior to take the following actions --

1. Support Implementation of the CALFED Program. The CALFED program is already providing benefits to water users, including those in the Westlands Water District. These benefits have included funding for groundwater, water quality, and water use efficiency programs. CALFED has also created an Environmental Water Account, which is helping to restore the Bay-Delta ecosystem and provide growers with greater certainty of supply. Ultimately, a healthy ecosystem, another goal of the CALFED program, will also provide greater certainty for water users.

Congress is currently considering legislation to authorize federal participation in the CALFED program. NRDC strongly supports S. 1768. However, H.R. 3208, as reported by the Resources Committee, would fundamentally undermine the CALFED program and threaten its success. We have shared with Committee staff a summary of some of the key differences between these bills. We urge the House to pass a CALFED bill this year that implements, and does not alter, the delicate balance in the CALFED plan. Future appropriations for CALFED could be at risk if an authorizing bill is not passed soon.

2. Prevent Rollbacks of Environmental Laws that Would Threaten CALFED . The Westlands Water District has sued the Department of the Interior as part of an attempt to force the Department to withdraw key decisions of the implementation of section 3406(b)(2) of the Central Valley Project Improvement Act. The Department's October 1999 decision has been upheld by the courts in the past. Last week, however, Interior suffered a legal setback in this case. We strongly urge the Department to appeal this ruling and continue to defend the implementation of the CVPIA. We are confident that Interior's October 1999 provision will prevail on appeal. This issue is a critical test of the Administration's support for the CALFED Program. The October 1999 decision is a key foundation for the CALFED program, as outlined in the attached letter to Secretary Norton. In particular, it is important to note that if Interior does not continue to defend (b)(2) implementation, it will eliminate the water supply assurances that have benefited Westlands and all other water users in the Central Valley, Southern California, and the Bay Area. A failure to fully

implement -- and defend -- the CALFED Record of Decision requirements regarding the CVPIA and the ESA would jeopardize the entire CALFED program. It would directly undermine both ecosystem restoration and water supply reliability for much of the state. Over the long term, it would undermine CALFED programs designed to benefit the entire state's environment and economy. We urge the Department of the Interior not to roll back environmental protections established under the CVPIA, the Endangered Species Act, and the Trinity River Restoration Act.

3. Refuse to Interfere in California Water Allocation Issues. Westlands is seeking legislation to guarantee its CVP water deliveries. Such a provision is included in H.R. 3208 as reported by the Resources Committee. Although less damaging than previous versions, the current language would still undermine the CALFED program, including its environmental protections and its water supply reliability benefits for other urban and agricultural water users. Such legislative assurances also represent substantial interference in state water allocation issues. Attached is a letter opposing legislative water delivery assurances signed by the Friant Water Users Authority, the Metropolitan Water District of Southern California, United Farm Workers, California Trout, and NRDC.

4. Urge the Westlands Water District to drop its Legal Attacks. In the past several years, the Westlands Water District has launched legal attacks to weaken legally-required environmental protections, to halt a project by the East Bay Municipal Water District, to undermine the water supply for farmers in the Friant Unit of the CVP, and, indirectly, to weaken the CALFED water delivery assurances which benefit all south-of-the-Delta water users. As a result of the attack on the Friant Unit of the CVP during 2001, farmers withdrew an offer to sell 200,000 acre-feet of water to Westlands. In short, during the past year, Westlands managers' aggressive legal strategy cost Westlands farmers 200,000 acre-feet of water. Withdrawing this action would allow Westlands to begin to rebuild these business relationships, which benefit both seller and buyer. Westlands' confrontational actions are not leading to durable solutions that will benefit its farmers.

5. Write Renewed CVP Contracts with Responsible Financing and Quantity Provisions. The Bureau of Reclamation is currently negotiating long-term contract renewals in the Central Valley. In the past, federal subsidies have inflated demand for water and worsened environmental problems. These subsidies also worsen the overproduction and commodity price problems facing agriculture throughout California. For your information, I have attached a Bureau of Reclamation graphic that indicates that over the past half century, CVP water users have repaid only 5 percent of the taxpayer investment of the CVP allocated to irrigation and M&I water. The repayment shown is in nominal dollars, and still leaves federal taxpayers shouldering all of the interest on this investment for CVP agricultural water users. We urge the Bureau to write contracts that move away from the massive subsidies of the past and that contain contract quantities that accurately reflect the delivery capability of the CVP.

6. Require an Open Process to Develop a Land Retirement Program. Tom Birmingham, the General Manager of the Westlands Water District, has suggested that it might be appropriate to stop farming, or to "retire," up to 200,000 acres of Westlands -- one third of the District. In retrospect, some of this land should never have been irrigated. In principle, we agree that an ambitious land retirement program could produce multiple benefits, including environmental, water supply, and water quality benefits. However, despite the fact that NRDC is a party to the litigation in which these issues are being addressed, and despite multiple requests, we have received only scant information regarding pending land retirement and settlement discussions. What information we have received raises serious concerns regarding potential environmental impacts, impacts to other water users, and the appropriateness of the expenditure of hundreds of millions of federal dollars. We believe that a land retirement partnership could produce broad benefits, but it will not succeed unless it is developed through an open process with other stakeholders - now excluded from the

process - at the table. We urge the Bureau of Reclamation to ensure that the process used to develop a land retirement program is an open and inclusive one.

7. Promote Urban and Agricultural Water Use Efficiency. CALFED has undertaken an economic analysis of all water supply options in California. Even without adding the economic benefits of a healthy environment, this analysis shows that the least expensive new water supplies in California are those that focus on improving water use efficiency - for agricultural and urban water users. The CALFED program has a major water use efficiency program.

The CALFED Process has led to a "fragile peace" on water issues in California. This ambitious effort is implementing a balanced program to serve the environment and economy of a state with over 30 million residents. However, the Westlands Water District, which represents a few hundred landowners, has chosen a different path. We urge Congress and the Administration to pursue the workable recommendations listed above, rather than abandoning this promising approach for the Westlands strategy of confrontation and conflict.

Thank you for this opportunity to address these important California water issues.

Attachments :

August 28, 2001 letter regarding the CVPIA and CALFED

February 1, 2002 letter regarding legislative water deliver assurances

Central Valley Project repayment graphic

Natural Resources Defense Council Save San Francisco Bay Association California League of Conservation Voters League of Women Voters of California Pacific Coast Federation of Fishermen's Associations Sierra Club American Rivers Friends of the River The Bay Institute of San Francisco California Trout California Sportfishing Protection Alliance Planning and Conservation League Mono Lake Committee CLEAN South Bay Marin Conservation League Golden Gate Audubon Society Santa Clara Valley Audubon Society Sierra Nevada Alliance WaterKeepers of Northern California Friends of the Trinity River California Urban Creeks Council Save the American River Association

August 28, 2001

Gale Norton, Secretary

Department of the Interior

1849 C Street, NW

Washington DC, 20240

Re: Implementation of Section 3406(b)(2) of the CVPIA

Dear Secretary Norton,

We are writing to express our appreciation for your continuing efforts to defend the final October 5, 1999 Department of Interior final decision regarding implementation of Section 3406(b)(2) of the Central Valley Project Improvement Act (CVPIA). The "(b)(2)" provision requires the Bureau of Reclamation to dedicate 800,000 acre-feet per year from the Central Valley Project to the restoration of the Bay-Delta estuary and its anadromous fisheries. The October 1999 final decision was issued after years of negotiation, and ultimately litigation, regarding implementation of section 3406(b)(2). It has repeatedly been upheld as legally valid by the federal court.

We understand that some have requested that the new administration reopen the October 1999 final decision. We write to urge you to reject these requests. Although we disagree with some portions of the final decision, we urge you not to administratively re-open this decision. The CALFED Record of Decision (ROD) is premised on full implementation of the CVPIA, including the commitment to provide 800,000 acre-feet of CVP water to Central Valley fish and wildlife each year. Strong implementation of the CVPIA is critical to restore the Bay-Delta ecosystem and its fisheries. Because of the close relationship between CVPIA implementation and CALFED, any decision to weaken CVPIA implementation would have direct and immediate impacts on the CALFED process. We would like to briefly present a few of these connections.

Environmental Water Account: The Environmental Water Account (EWA) is intended to "provide water for the protection and recovery of fish beyond water available through existing regulatory actions related to project operations," (ROD, p. 54) clearly including the CVPIA. In fact, the size and operating rules of the EWA were determined based on extensive modeling and evaluation which assumed the full use of the 800,000 acre-feet supply of water "pursuant to section 3406(b)(2) of the CVPIA in accordance with Interior's October 5, 1999 decision, clarified as follows" (ROD, p. 56). (The ROD goes on to resolve "offset" and "reset" - two critical CVPIA accounting issues.) The permits which allow water project operators to export water from the Delta, providing the EWA is being implemented, could be invalid if the CVPIA baseline for the EWA were no longer in place.

Endangered Species Act and Delta Pumping Commitments: The Biological Opinions that support CALFED implementation and commitments made to water users regarding ESA implementation, the Environmental Water Account and Delta pumping are explicitly dependent on implementation of the CVPIA as described in the October 1999 final decision and the ROD. In particular, resource agencies found that the CALFED ROD complies with the requirements of the ESA because of the benefits of the full range of protection and restoration tools in the ROD. A weakening of the CVPIA would undermine CALFED's compliance with the ESA and require a reinitiation of consultation. It would likewise undermine commitments made to water users regarding Delta pumping and water supplies.

Balancing: The CALFED ROD requires a finding of balanced implementation. Specifically, this section of the ROD requires that agency actions be "consistent with the intent of this ROD and applicable regulatory compliance documents" (ROD, page 5). Any decision to reverse final decisions regarding implementation of (b)(2) would be inconsistent with the ROD and with environmental compliance documents and would make it impossible to make a credible finding of balanced implementation.

Consistency with the CALFED ROD: Interior signed a CALFED "Implementation Memorandum of Understanding", which is included in the CALFED ROD. One of the implementation principles states that "The Agencies will support the implementation of the CALFED Program as described in the ROD. Agencies will support and implement actions consistent with the ROD" (ROD, Attachment 3, page 5). Clearly, it would be impossible to honor this commitment if Interior were to reverse critical commitments

about implementing section 3406(B)(2) made in the ROD.

National Environmental Policy Act: The October 1999 final decision and the clarifications regarding "offset" and "reset" are formally incorporated into the CALFED ROD and environmental documentation. Any change in these positions would affect the validity of the CALFED environmental documents and could require a new NEPA analysis, and most likely the issuance of a supplemental environmental impact statement.

We would be pleased to meet with you to discuss the CALFED program and implementation of the CVPIA. In particular, if you consider any reopening, revisiting or clarification of (b)(2) implementation issues, we request an opportunity to meet with you before you make any decisions. We look forward to working with you to implement the CALFED ROD. Thank you for your consideration of our views.

Sincerely,

Barry Nelson Cynthia Koehler
Natural Resources Defense Council Save San Francisco Bay Association

Sarah Rose Roberta Borgonovo
California League of Conservation Voters League of Women Voters of California

Dan Sullivan S. Elizabeth Birnbaum
Sierra Club American Rivers

Elizabeth Reifsneider Gary Bobker
Friends of the River The Bay Institute of San Francisco

Nick Di Croce Richard Izmirian
California Trout California Sportfishing Protection Alliance

Gerald H. Meral, PhD Frances Spivy-Weber
Planning and Conservation League Mono Lake Committee

Bob Raab Trish Mulvey
Marin Conservation League CLEAN South Bay

Arthur Feinstein Kelly Crowley
Golden Gate Audubon Society Santa Clara Valley Audubon Society

Laurel Ames Jonathan Kaplan
Sierra Nevada Alliance WaterKeepers of Northern California

Byron Leydecker John Steere
Friends of the Trinity River California Urban Creeks Council

Zeke Grader Alan D. Wade
Pacific Coast Federation of Fishermen's Save the American River Association

Associations

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